

---

---

IN THE  
**United States Court of Appeals**  
FOR THE NINTH CIRCUIT

---

**No. 22523**

---

DAVID LEROY DANIELS,  
*Appellant,*

VS.

UNITED STATES OF AMERICA,  
*Appellee.*

---

**APPELLANT'S OPENING BRIEF**

---

J. B. TIETZ

410 Douglas Building

257 South Spring Street

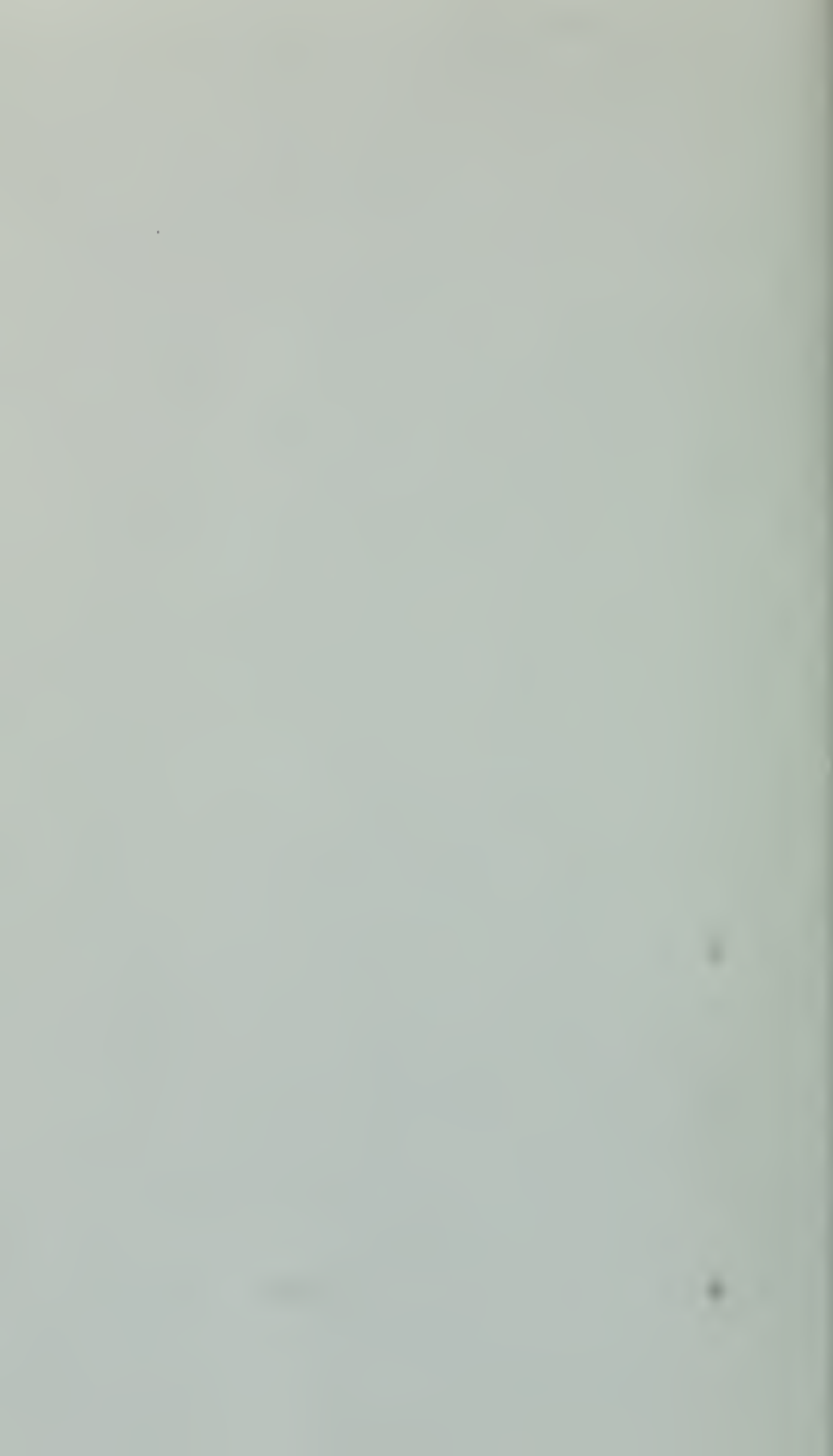
Los Angeles, California 90012

*Attorney for Appellant*

**FILED**

APR 25 1968

WM. S. LUCK, CLERK



## INDEX

Jurisdiction .....	1
Statement of the Case .....	2
Facts .....	2
Questions Presented and How Raised .....	4
Specification of Error .....	4
Summary of Argument .....	4
Argument—	
I. Appellant's Unrebutted Prima Facie Case .....	5
II. The Work to Which Appellant Was Ordered Was Inappropriate in That It Involved Elements Con- trary to His Religion .....	9
Conclusion .....	11
Certification .....	11

## TABLE OF CASES

<i>Daniels v. United States</i> , 9 Cir., 1967, 372 F.2d 407 .....	2
<i>Dickinson v. United States</i> , 74 S. Ct. 152 .....	6
<i>United States v. Copeland</i> , D. Conn. 1954, 126 F. Supp. 734 .....	10
<i>United States of America, Plaintiff v. George Donald Sparks, Defendant</i> , Criminal No. IP-54-CR-30, South- ern District of Indiana, Indianapolis Division, Feb- ruary 11, 1955 .....	10
<i>Wiggins v. U. S. A.</i> , 5 Cir., 1958, 261 F.2d 113 .....	9

## STATUTES AND REGULATIONS

32 C.F.R. § 1622.43 .....	6
32 C.F.R. § 1623.2 .....	6
32 C.F.R. § 1660.1 .....	10

32 C.F.R. § 1660.20(c) .....	10
Rule 37 (A) (1), (2), Federal Rules of Criminal Procedure .....	2
Title 18, United States Code, Section 3231 .....	2
Title 50, United States Code App., Section 462 .....	1
Universal Military Training and Service Act, Section 16 of Title I .....	7

IN THE  
**United States Court of Appeals**  
FOR THE NINTH CIRCUIT

---

**No. 22523**

---

DAVID LEROY DANIELS,  
*Appellant,*

vs.

UNITED STATES OF AMERICA,  
*Appellee.*

---

**APPELLANT'S OPENING BRIEF**

---

**JURISDICTION**

This is an appeal from a judgment rendered by the United States District Court for the Eastern District of California.

The appellant was sentenced to the custody of the Attorney General for a period of three years after a one count conviction for violation of Title 50, United States Code App. Section 462 (knowingly fail and refuse to perform a duty required of him, as ordered), Universal Military Training and Service Act [Tr. 20]<sup>1</sup>, and failure to report to Local Board.

---

1. Tr. refers to the Transcript of Record.

Title 18, United States Code, Section 3231, conferred jurisdiction in the District Court over the prosecution of this case. The United States Court of Appeals for the Ninth Circuit has jurisdiction of this appeal under Rule 37 (A) (1) and (2) of the Federal Rules of Criminal Procedure. Notice of Appeal was filed in the time and manner required by law [Tr. 21].

### STATEMENT OF THE CASE

The indictment charged appellant with a violation of the Universal Military Training and Service Act for refusing to perform a work assignment, as ordered [Tr. 20] and failure to report to Local Board.

Appellant pleaded "not guilty" and was tried by the Honorable Myron D. Crocker, United States District Judge, jury trial having been waived. Appellant was found guilty and sentenced to imprisonment for a period of three years [Tr. 20].

A written motion for judgment of acquittal was filed during the trial [Tr. 13].

Prior court history of this matter is set forth in *Daniels v. United States*, 9 Cir. 1967, 372 F.2d 407.

### FACTS

Appellant was registered with the Selective Service System on November 10, 1960 [Exs. 1-2].\*

---

\*Ex. refers to the Government's exhibit, the selective service file of appellant. An Arabic number is the pagination which is found pencilled at the bottom of each sheet of the exhibit.

He signed Series VIII of the Classification Questionnaire [Ex. 7], thereby asserting he was a conscientious objector. He made the following entries in Series VII, the portion of the questionnaire relating to ministry:

"I am a minister and I have been formally ordained." [Ex. 7]. He added a full sheet of particularization to support this statement [Ex. 9].

The first (and only) classification given him was I-O, that is, conscientious objector. He requested an Appearance Before Local Board and an appeal. These were given him but both his efforts were fruitless.

Appellant's brother described the ministry activity of David, showing the following: the ministry of Jehovah's witnesses is unpaid so that each must put in some time in secular work [Rep. Tr. 15/11-....]; that "pioneering" meant nearly full-time ministry [Rep. Tr. 15/1]; that David could pioneer only for short periods, termed "vacation pioneering" because his savings wouldn't permit long periods [Rep. Tr. 15/16] and that David also had the obligation of partially supporting his mother [Rep. Tr. 16/5]; that some of the congregation of ministers were "servants", that is, leaders, and that David was one during the period of his administrative agency processing [Rep. Tr. 16/11-....]; that David also had a congregation all his own [Rep. Tr. 17/6-....].

David showed that the ministry was his vocation [Rep. Tr. 27-....] and that the work to which he was ordered required that he participate in the use of blood [Rep. Tr. 7/3 and 29/18-....] and that he be on call at all hours [Rep. Tr. 6/25 and 29/6].

## **QUESTIONS PRESENTED AND HOW RAISED**

Each of the questions presented by this appeal was raised in the District Court by the Motion for Judgment of Acquittal filed therein [Tr. 13].

### **I**

Was there any basis in fact for denying appellant the IV-D classification?

### **II**

Did the government fail to prove a violation of the Act and Regulations by appellant when it failed to show that he had been ordered to suitable civilian work?

## **SPECIFICATION OF ERROR**

The District Court erred in denying the Motion for Judgment of Acquittal.

## **SUMMARY OF ARGUMENT**

### **I**

Appellant presented a prima facie case for a IV-D minister's classification. No evidence whatsoever appears to rebut this claim.

### **II**

The proof offered by the government showed that appellant was ordered to perform civilian work which conflicted (1) with his religious objections to handling blood and participating in blood transfusions, and (2) with



his commitment to his ministry, also a most obvious religious problem to him.

To thus compel a citizen to involuntarily perform a *type* of civilian work that violates his religious beliefs and commitments is a prohibition of the free exercise of appellant's religion forbidden by the First Amendment to the Constitution of the United States.

## ARGUMENT

### I

#### Appellant's Unrebutted Prima Facie Case

Appellant showed that he had worked at various secular activity to earn a living [Rep. Tr. 27/8]; that his "life's work was to be a minister" and that he "looked forward to the time when I could engage in full time ministry work and get in a field to support myself and engage in ministry full time." [Rep. Tr. 27/12].

That this "vocation" was the ministry [Rep. Tr. 28/5]; that he never took secular work that interfered with his vocation [Rep. Tr. 28/14 and 29/9].

The record undisputedly shows appellant made claim for a minister's classification and presented evidence he was "... a minister" and that he had "... been formally ordained." [Ex. 7].

There was ample corroboration [Ex. 9, 15-54].

Appellant thus presented a prima facie case for a IV-D classification (minister's status). No contrary evidence, if any existed, was ever placed in the file. There-

fore, he should have been classified in Class IV-D. It was incumbent on the board to place adverse evidence in the file, as a justification for rejecting his claim. *Dickinson v. United States*, 74 S. Ct. 152, 159.

Selective Service System regulation, 32 C.F.R., Sec. 1623.2, requires that a registrant be classified in the "lowest" class, according to a table which placed IV-D "lower" than I-O.

1623.2 Consideration of Classes.—Every registrant shall be placed on Class I-A under the provisions of section 1622.10 of this chapter except that when grounds are established to place a registrant in one or more of the classes listed in the following table, the registrant shall be classified in the lowest class for which he is determined to be eligible, with Class I-A-O considered the highest class and Class I-C considered the lowest class according to the following tables:

Class: I-A-O	Class: IV-B
I-O	IV-C
I-S	IV-D
I-Y	IV-F
II-A	IV-A
II-C	V-A
II-S	I-W
I-D	I-C
III-A	

Regulation 32 C.F.R. § 1622.43 governs classification of registrants presenting evidence for a minister's status.

1622.43 Class IV-D: Minister of Religion or Divinity Student.—(a) In Class IV-D shall be placed any registrant:

- (1) Who is a regular minister of religion;
- (2) Who is a duly ordained minister of religion;
- (3) Who is a student preparing for the ministry under the direction of a recognized church or religious organization and who is satisfactorily pursuing a full-time course of instruction in a recognized theological or divinity school; or
- (4) Who is a student preparing for the ministry under the direction of a recognized church or religious organization and who is satisfactorily pursuing a full-time course of instruction leading to entrance into a recognized theological or divinity school in which he has been pre-enrolled.

(b) Section 16 of Title I of the Universal Military Training and Service Act, as amended, contains in part the following provisions:

“Sec. 16. When used in this title— \* \* \* (g) (1) the term ‘duly ordained minister of religion’ means a person who has been ordained, in accordance with the ceremonial, ritual, or discipline of a church, religious sect, or organization established on the basis of a community of faith and belief, doctrines and practices of a religious character to preach and to teach the doctrines of such church, sect, or organization and to administer the rites and ceremonies thereof in public worship, and who as his regular and customary vocation preaches and teaches the principles of religion and administers the ordinances of public worship as embodied in the creed or principles of such church, sect, or organization.

“(2) The term ‘regular minister of religion’ means one who as his customary vocation preaches

and teaches the principles of religion of a church, a religious sect, or organization of which he is a member, without having been formally ordained as a minister of religion, and who is recognized by such church, sect, or organization as a regular minister.

“(3) The term ‘regular or duly ordained minister of religion’ does not include a person who irregularly or incidentally preaches and teaches the principles of religion of a church, religious sect, or organization and does not include any person who may have been duly ordained a minister in accordance with the ceremonial, rite, or discipline of a church, religious sect or organization, but who does not regularly, as a vocation, teach and preach the principles of religion and administer the ordinances of public worship as embodied in the creed or principles of his church, sect, or organization.”

“Vocation” is the chief consideration. “Full-time” is nowhere mentioned; nor is “part-time” mentioned. Nor is the word “Pioneer” or any equivalent expression used. Neither hours of activity nor clerical title are recognized by the Act or the regulations as factors in classifying.

Ministerial activity that is “irregular” is stated to be a disqualification. This consideration does not apply here. Appellant’s uncontradicted evidence is that he regularly performed enumerated clerical activity.

The only other disqualifying consideration mentioned by law is “incidental”. Here there was no finding by the board on this factor. Appellant’s factual and relevant testimony was to the contrary. None was rebutted. The final step of his processing by the Selective Service Sys-

tem shows that he didn't regard his ministerial work as incidental to other work but as something so important to him that he willingly faced a prison term when it became clear that the I-O classification given him would interfere with his obligation to Jehovah.

Thus, there can be no doubt that appellant Daniels made out a prima facie case, and an unrebutted one. See *Wiggins v. U. S. A.*, 5 Cir., 1958, 261 F.2d 113.

## II

### **The Work to Which Appellant Was Ordered Was Inappropriate in That It Involved Elements Contrary to His Religion.**

Appellant testified that he had reason to believe that the work the local board ordered him to do, at the Los Angeles General Hospital, would or might interfere with his commitment to his ministry in that he would "have to be on call, in other words, at all times and we would have no week-ends free." [Rep. Tr. 29/6].

He also testified that he had learned he would have to handle blood and that this was against his religion [Rep. Tr. 29/25].

Appellant was ordered to do his civilian work at the Los Angeles County Department of Charities. Before being so ordered the State Director had asked the Director for such authority, stating that the work was "suitable". The Director approved.

We do not contend that this work did not meet all the statutory requirements, in general.

We contend that it was not suitable, in particular, that is, as an assignment to this appellant.

The law provides that work assigned shall be "appropriate." [32 C.F.R. § 1660.1]. Where the registrant does not agree to the type suggested to him by the Selective Service System an arbitration-type of meeting is arranged [32 C.F.R. § 1660.20(c)].

Our objection is that the work ordered involved duties contrary to his religious beliefs. His unrebutted testimony showed that the work interfered with his religious (ministry) commitment because of the hours [Rep. Tr. p. 29, lines 6-....].

He also showed that the work offered would involve handling blood, contrary to his religious belief and the well-known beliefs of the Jehovah's witnesses [Rep. Tr. 29/25].

Work religiously objectionable has been held inappropriate for the alternate service contemplated by Congress.

In *United States v. Copeland*, D. Conn. 1954, 126 F. Supp. 734, it was held that work that adversely affected the religious beliefs of a registrant was inappropriate.

Likewise, in *United States of America, Plaintiff v. George Donald Sparks, Defendant*, Criminal No. IP-54-CR-30 decided by Honorable William E. Steckler, district judge, Southern District of Indiana, Indianapolis Division on February 11, 1955, the court held that the work to which Sparks had been ordered "clashed with those of the sectarian principles of the defendant" and therefore acquitted him.



## CONCLUSION

For the reasons stated above, it is respectfully submitted that the judgment of the District Court should be reversed and the cause remanded with instructions to grant the petition for writ of habeas corpus.

Respectfully submitted,

J. B. TIETZ

*Attorney for Appellant*

I certify that, in connection with the preparation of this brief, I have examined Rules 18 and 19 of the United States Court of Appeals for the Ninth Circuit, and that, in my opinion, the foregoing brief is in full compliance with those rules.

J. B. TIETZ

410 Douglas Building

257 South Spring Street

Los Angeles, California 90012

*Attorney for Appellant*

April 22, 1968

